

**STATE OF GEORGIA
COUNTY OF FULTON
CITY OF SOUTH FULTON**

ORDINANCE No. 2017-011

**ADOPTION OF ORDINANCE ESTABLISHING THE ZONING BOARD OF
APPEALS FOR THE CITY OF SOUTH FULTON**

WHEREAS, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the City Council is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs, and local government;

WHEREAS, the duly elected governing authority of the City is the Mayor and City Council;

WHEREAS, Section 4.11 of the City Charter authorizes the City Council to create such boards, commissions and authorities to fulfill any investigative, quasi-judicial, or quasi-legislative function the City Council deems necessary;

WHEREAS, Section 1.12(b)(26) of the City Charter authorizes the City to exercise planning and zoning powers;

WHEREAS, the City is charged with preserving the health, safety, and welfare of its citizens; and

WHEREAS, the establishment of a Zoning Board of Appeals to oversee all zoning and planning appeals regarding real property within the City's borders is in the best interest of the City.

THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS
as follows:

Section 1: The City of South Fulton Code of Ordinances, Chapter 6, Title 5, Zoning and Planning, is hereby established and enacted as follows:

Title 5: ZONING AND PLANNING

CHAPTER 6. – APPEALS

Sec. 5-6001. – Zoning Board of Appeals established; membership; terms.

(a) *Creation.* There is hereby established a Zoning Board of Appeals which shall consist of eight members, residents of the city, who shall be appointed by the City Council as follows:

- (1) One member shall be nominated by each member of the City Council and the Mayor; and
- (2) Each member shall be approved by a vote of the majority of the City Council.

(b) *Terms.* The Zoning Board of Appeals members shall serve a term consistent with that of the member of the City Council (or the Mayor) making the nomination. A Enforcement Board member shall serve until his or her replacement is appointed by the City Council in a manner consistent with this ordinance. The Zoning Board of Appeals members shall serve no more than two terms, either consecutive or non-consecutive, and a term shall end upon the swearing in or re-swearing in of the member of the City Council (or the Mayor) who nominates the Enforcement Board member.

(c) *Chair and Vice Chair.* The Zoning Board of Appeals shall elect one of its members to serve as chairperson and another to serve as vice-chairperson. The chairperson and vice-chairperson of the Zoning Board shall serve a term of one year or until reelected or a successor is elected. The duty of the chair shall be to conduct the meetings in accordance with the procedures set forth herein and any other rules or regulations established by the Zoning Board of Appeals. The vice-chairperson shall conduct the meetings in the chair's absence. The vice-chairperson may be appointed chair if the chair is removed from office, or due to a physical or mental disability, cannot perform the duties of chair.

(c) *Qualifications.*

- (1) Board members shall hold no other city office or city-compensated position during such member's term.
- (2) All Zoning Board of Appeals members shall be residents of the City.
- (3) No person shall serve at a meeting of the Zoning Board of Appeals as a member until they have been certified as having completed at least two hours of training.

(d) *Removal.*

- (1) Except as provided in paragraph (2) of this Zoning Board of Appeals members may be removed by the City Council at any time.
- (2) Zoning Board of Appeals members shall automatically be removed from the Board if they miss two consecutive meetings without the permission of the Chair, or if the Board member fails to attend at least 75 percent of the Board meetings in a 12 month period. The Board secretary shall notify the City Clerk of any Board member who does not attend a meeting. If a Board member is removed for failure to attend meetings as set forth in his paragraph, the removal is automatic and does not require a vote of the City Council.

- (e) *Compensation.* The City Council may, by resolution, determine the amount of compensation, if any, to be paid to the Zoning Board of Appeals members. In the absence of such resolution, no compensation shall be provided to the members of the Zoning Board of Appeals.

Sec. 5-6002. – Meetings of the board.

The board shall adopt its rules of procedure, which shall be substantially similar to the rules of procedure of the City Council, and determine its time of meetings. The date and time of each meeting shall be standardized and regular; provided, however, the Zoning Board of Appeals may call for and have a specially called meeting subject to the requirements of Georgia law and the ordinances of the City. In the case of a specially called meeting, at least 24 hours public notice shall be made available. Agenda items to be considered shall be publicized in the same manner as meetings of the mayor and council. A meeting may be canceled by the chairperson, secretary or community development director or his designee if there are no matters to be acted upon by the board.

Sec. 5-6003. – Rules of procedure.

The Zoning Board of Appeals shall propose rules of procedure to the City Council, and the rules shall specify the policies and procedures that govern calling and conducting the public hearings by the Zoning Board of Appeals. Robert's Rules of Order shall govern any procedural question not otherwise covered in the rules of procedure of the Zoning Board of Appeals or City Council. The proposed rules shall not be effective until either the City Council approves them at a public meeting, or the City Council has not acted on the proposed rules for three public meetings since receiving notice of the proposed rules by the Zoning Board of Appeals. Notice shall be provided to the City Council by the City Clerk upon transmission of the proposed rules from the Zoning Board of Appeals to the City Clerk. The Zoning Board of Appeals rules shall be made available for distribution to the public.

Sec. 5-6004. - Quorum, voting, and actions by board.

A quorum of the board shall consist of four members of the board. A quorum is necessary for the board to take official action. A member who has withdrawn from the meeting without being excused as provided herein shall be counted as present for the purpose of determining whether a quorum is present. All official actions of the board shall be taken by majority vote of the members present. The Board member nominated by the Mayor shall not vote unless there is a tie. A roll call vote shall be taken upon the request of any member.

Sec. 5-6005. - Secretary.

A City employee shall serve as the Secretary of the Zoning Board of Appeals. The secretary shall provide support to the Zoning Board of Appeals as reasonable and

necessary to accomplish said Board's duties. The secretary of the Zoning Board of Appeals shall provide the members of the Zoning Board of Appeals all information submitted to, or generated by, city staff on each proposed amendment, which the Zoning Board of Appeals considers, including: a copy of the application and all supporting materials; all other written communications given to the staff either in support of or in the opposition to the amendment; any decision of the Board; the minutes, if any, of the Board meeting; and any filings made by any party that appears before the Board. The secretary shall be responsible for transmitting the records of the Zoning Board of Appeals to the City Clerk.

Sec. 5-6006. – Reserved.

Sec. 5-6007. - Staff analysis, findings of fact, and recommendation on each application for variance and special exception.

The appropriate City staff shall conduct a site inspection of and shall prepare a written analysis of each matter coming before the Zoning Board of Appeals. The analysis shall cite to and analyze the criteria and standards necessary to decide the issue presented to the Zoning Board of Appeals. The analysis may include a recommendation to the Zoning Board of Appeals.

Sec. 5-6008. - Testimony.

All testimony before the Zoning Board of Appeals shall be taken as if under oath regardless of whether or not a formal oath or affirmation is administered. The chairperson, or in his absence the acting chairperson, may administer oaths and compel the attendance of witnesses by subpoena.

Sec. 3-6009. – Hearings before the Zoning Board of Appeals.

(a) *Subject Matter Jurisdiction.* The Zoning Board of Appeals shall have the jurisdiction, power, and duty to hear and decide appeals may be filed by any person aggrieved by, or by any city official, department, board, commission, or agency affected by, any final order, requirement, or decision of an administrative official, based on or made in the enforcement of the zoning ordinance, by filing with the secretary of the board an application for appeal specifying the grounds thereof, within 30 days after the action appealed from was taken. The City may appeal to the Zoning Board of Appeals a decision of the Planning Commission. The failure of a City official, department, board, commission, or agency to act shall not be construed to be an order, requirement or decision within the meaning of this division. A person shall be considered aggrieved for purposes of this subsection only if:

- (1) Said person or said person's property was the subject of the action appealed from; or

- (2) Said person has a substantial interest in the action appealed from that is in danger of suffering special damage or injury not common to all property owners similarly situated.

(b) *Deadline to file an appeal.* All appeals shall be filed pursuant to this Ordinance within thirty days of the decision appealed.

(c) *Appeal stays all legal proceedings.* An appeal stays all legal proceedings in furtherance of the action appealed from unless the official from whom the appeal is taken certifies to the board, after notice of appeal has been filed, that by reasons of facts stated in the certificate, a stay would, in that official's opinion, cause imminent peril to life and property. In such a case, proceedings shall be stayed only by a restraining order granted by the Superior Court of Fulton County.

(d) *Time of hearing.* The board shall fix a reasonable time for the hearing of the appeal and give notice thereof pursuant to the requirements of section 3-6014 as well as due notice to the parties in interest. Any party may appear at the hearing in person, by an agent, by an attorney or by a written documentation. The Zoning Board of Appeals will not furnish a court reporter, but any party to the proceeding may do so at its own cost.

(e) *Notice of hearing.* Notice of public hearing before the board on any application for appeal, variance, or special exception shall be provided as follows:

- (1) Written notice of the nature of the proposed application, and the date, time, and place of the public hearing before the board shall be mailed by first class mail to all property owners within 250 feet of the boundaries of the subject property as measured by use of the official zoning map, and as such property owners are listed on the tax records of the county, at least 15 days before the public hearing before the board;
- (2) Signs shall be posted within the public right-of-way or on the subject property at least 15 days before the hearing before the board. One sign shall be posted for each 500 feet of street frontage or fraction thereof along each street on which the subject property has frontage. Signs shall be double-faced and posted so that the face of the sign is at a right angle to the street in order that said signs can be read by the traveling public in both directions. The lettering on the signs shall be at least one inch in size and the sign shall state the nature of the proposed application and the date, time and place of the public hearing before the board; and
- (3) Notice of the nature of the proposed application and the date, time and place of the public hearing before the board shall be published in the newspaper of general circulation within the city in which are carried the legal advertisements of the city at least 15 days prior to the date of the hearing before the board and not more than 45 days prior to the date of the hearing before the board.

(f) *Decision of the board.* Following the consideration of all testimony, documentary evidence, and matters of record, the Zoning Board of Appeals shall make a determination on the matter before it. The Zoning Board of Appeals shall decide the appeal within a reasonable time but in no event more than 60 days from the date of the hearing. An appeal shall be sustained only upon an expressed finding by the board that the administrative official's action was based on an erroneous finding of a material fact, or that the administrative official acted in an arbitrary manner. In exercising its powers, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by all other applicable laws are met.

Sec. 3-6010. - Compliance with standards upon denial.

In such case that an application to the board is initiated due to an existing violation of this chapter and such application is denied, the violation shall be required to be corrected within ten to 30 days of such denial or as specified by the board if a greater time period is required. The maximum extension of time the board may grant for correction shall not be less than 30 nor more than 90 days.

Sec. 3-6011. - Successive applications.

An application for a variance or special exception affecting all or a portion of the same property which was denied by the zoning board of appeals shall not be submitted more than once every 24 months measured from the date of final decision by the zoning board of appeals. The zoning board of appeals may waive or reduce this 24-month time interval by resolution provided that if the application for a variance or special exception was denied by the zoning board of appeals, the time interval between the date of said denial and any subsequent application or amendment affecting the same property shall be no less than six months.

Sec. 3-6012. - Appeals of decisions of the Zoning Board of Appeals.

All appeals of all final decisions of the board under the provisions of this chapter shall be as follows:

- (1) *Writ of Certiorari.* Any person aggrieved by a final decision of the board, or any officer, department, board or agency affected by such decision, may seek review of such decision by petitioning the superior court of the county for a writ of certiorari, setting forth plainly the alleged errors. Such petition shall be filed within 30 days after the final decision of the board is rendered.
- (2) *Notice to Board.* In any such petition filed, the zoning board of appeals shall be designated the respondent in certiorari and the city the defendant in certiorari. Service shall be as provided by law. Within the time prescribed by law, the zoning board of appeals shall cause to be filed with the clerk of the superior court of the

county a duly certified record of the proceedings had before the board, including a transcript of the evidence heard before it, if any, and the decision of the board.

Section 2: Severability

In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of South Fulton, Georgia, that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause or phrase were not originally a part of the ordinance.

Section 3: Repealer

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4: Effective Date

Unless specifically specified elsewhere in this Ordinance, the effective date of this Ordinance shall be July 12, 2017.

The foregoing Ordinance No. **2017-011** was offered by Councilmember **Baker**, who moved its approval. The motion was seconded by Councilmember **Gilyard**, and being put to a vote, the result was as follows:

“SECOND READ”

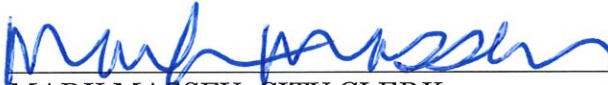
	AYE	NAY
William “Bill” Edwards, Mayor	<hr/>	<hr/>
Catherine Foster Rowell, Mayor Pro Tem	<hr/> √	<hr/>
Carmalitha Lizandra Gumbs	<hr/> √	<hr/>
Helen Zenobia Willis	<hr/> √	<hr/>
Gertrude Naeema Gilyard	<hr/> √	<hr/>
Rosie Jackson	<hr/> √	<hr/>
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Mark Baker	<hr/> √	<hr/>

THIS ORDINANCE adopted this 11th day of July 2017. CITY OF
SOUTH FULTON, GEORGIA



WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:



MARK MASSEY, CITY CLERK



APPROVED AS TO FORM:



JOSH BELINFANTE, INTERIM CITY ATTORNEY